



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 28487243

Date: NOV. 13, 2023

Appeal of National Benefits Center Decision

Form I-600, Petition to Classify Orphan as an Immediate Relative

The Petitioner, a U.S. citizen, seeks to classify an orphan as an immediate relative under Immigration and Nationality Act (the Act) section 101(b)(1)(F)(i), 8 U.S.C. § 1101(b)(1)(F)(i). The Director of the National Benefits Center (Director) denied the application, and the matter is now before us on appeal. 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

A child who meets the definition of orphan under section 101(b)(1)(F)(i) of the Act is eligible for classification as the immediate relative of a U.S. citizen. 8 C.F.R. § 204.3. An orphan is defined as a child, under the age of 16 at the time a petition is filed on his or her behalf, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen, or who is coming to the United States for adoption by a United States citizen; provided, that the Secretary of Homeland Security is satisfied that proper care will be furnished if the child is admitted to the United States. Section 101(b)(1)(F)(i) of the Act.

The regulation at 8 C.F.R. § 204.3(k)(1), regarding a consular officer's I-604, Determination on Child for Adoption (I-604), provides, in pertinent part:

An I-604 investigation must be completed in every orphan case. The investigation must be completed by a consular officer except when the petition is properly filed at a Service office overseas, in which case it must be completed by a Service officer. . . . In any instance where an I-604 investigation reveals negative information sufficient to sustain a denial or revocation, the investigation report, supporting documentation, and petition shall be forwarded to the appropriate Service office for action. Depending on the circumstances surrounding the case, the I-604 investigation shall include, but shall not necessarily be limited to, document checks, telephonic checks, interview(s) with the natural parent(s), and/or a field investigation.”

The regulation at 8 C.F.R. § 204.3(b) states, in pertinent part, the following:

Abandonment by both parents means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer or without transferring these rights to any specific persons.

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner filed the instant orphan petition on behalf of the Beneficiary, a citizen of Nigeria, in August 2021. The Petitioner claimed that the Beneficiary met the definition of an orphan as the child who “has no parents due to . . . abandonment . . . by . . . both parents.” The Director issued a request for evidence (RFE) in August 2021 seeking, among other things, evidence of the Beneficiary’s orphanhood and a full and final adoption order completed in accordance with the laws of Nigeria. The Petitioner responded to the RFE in February 2022.¹

In March 2022, USCIS sent the Petitioner’s orphan petition to the U.S. Embassy in Lagos, Nigeria for a Form I-604, Determination on Child for Adoption (Form I-604 investigation). The record indicates that, during a review of the orphan petition, a consular officer in Lagos, Nigeria, noted that an affidavit from C-A-² the Beneficiary’s purported birth mother, was very similar to other affidavits from [redacted] State and only contained her initials. Additionally, the affidavit did not have a court address or stamp. Regarding the documents from [redacted] State Ministry of Women Affairs and Social Development (the Ministry) and the [redacted] (orphanage) associated with the Beneficiary’s case, the consular officer noted that the social welfare investigation report from the Ministry did not mention C-A-, detail their investigation into the Beneficiary’s origins, or reference any specific efforts to identify or locate the Beneficiary’s birth father. Lastly, the consular officer noted that the orphanage report and the adoption and foster orders contained conflicting information regarding the Petitioner and his spouse’s presence in Nigeria for the foster and adoption hearings.

Upon completion of its I-604 investigation, a consular officer returned the petition, and the Director issued a notice of intent to deny (NOID) in May 2022. In the NOID, the Director informed the Petitioner that, after an I-604 investigation “[his] case was found to be not clearly approvable based on evidence, including, but not limited to, the results of a review of documents submitted by the [redacted] State Ministry of Women Affairs and Social Development and [redacted]” The Petitioner disputed that determination, and submitted timely responses to the NOID in June 2022 and July 2022. The Director acknowledged the Petitioner’s responses,³ but determined that they did not

¹ In response to the RFE, the Petitioner submitted a copy of the purported birth mother’s affidavit, 2021 foster and 2022 adoption orders from the Family Court of [redacted] State, a copy of the Beneficiary’s late-registered birth certificate, various letters and reports from the Ministry, and a legal opinion from the Petitioner’s attorney in Nigeria.

² Initials are used to protect the individual’s privacy.

³ In response to the NOID, the Petitioner submitted previously submitted 2021 foster and 2022 adoption orders from the Family Court of [redacted] State, additional letters from the orphanage, Ministry and Family Court of [redacted] State, an affidavit from his spouse, and photographs of the Beneficiary.

resolve the deficiencies noted in the NOID. As a result, the Director denied the orphan petition. The Petitioner filed a motion to reopen and reconsider with additional evidence. The Director again acknowledged the response, but determined that it did not overcome the grounds for denial. The Petitioner timely appealed the denial.

B. The Petitioner Has Not Established that the Beneficiary Meets the Definition of an Orphan under Section 101(b)(1)(F) of the Act.

On appeal, the Petitioner contends that he submitted sufficient evidence of the Beneficiary's eligibility for the benefit sought. He notes that [redacted] is misspelled in all of C-A's affidavits and the stamp might not have appeared on the affidavit due to a photocopying error. He further contends that he submitted sufficient evidence of a full and final adoption under the laws of Nigeria. Specifically, he references the 2021 foster and 2022 adoption orders, which he argues replaced invalid orders issued by the Family Court of [redacted] State in 2019.

The Director acknowledged the Petitioner's arguments and his evidence submitted in response to the motion to reopen and reconsider. However, she determined that the evidence was insufficient to show that the Beneficiary met the definition of an orphan or that there was a full and final adoption in accordance with the laws of Nigeria. The Director noted C-A's affidavit, and the Petitioner's argument that "the previous affidavits were not complete, and the attestation was omitted due to a copying or printing error." However, the Director found the Petitioner's argument unpersuasive because [redacted] was misspelled in C-A's affidavit and had a stamp over the signature, whereas the previously submitted copies did not have a stamp. The Petitioner has not provided any additional evidence on appeal addressing the stamp or the typographical error on the affidavit. We acknowledge the letter from F-I- confirming that he prepared the record of proceedings from the hearing in October 2021. However, his letter does not mention C-A's affidavit or otherwise address the authenticity of the affidavit.

Furthermore, a review of the record indicates that the Petitioner and his spouse stated in their October 2021 *Application for Fostering/Adoption* that, on "18th day of March, 2019 and 7th day of August 2019, [they] were not in Nigeria and did not attend the court sitting." They further stated that, "[their attorney in Nigeria] has informed [them] during [their] telephone conversation in preparation for this case and [they] verily believe him that the adoption order is invalid by the reason of [their] absence." Based on those statements, the Family Court of [redacted] State "recalled" the 2019 foster and adoption orders. However, as noted by the Director, the October 2021 *Application for Fostering/Adoption* is not signed by a judge nor does it contain a court seal. Moreover, it remains unclear why the Family Court of [redacted] State issued orders indicating that the Petitioner and his spouse were present at the 2019 hearings when they later admitted they were not in Nigeria at the time. As a result, we agree with the Director's conclusion that the lack of a signature and seal cast doubt on their validity and whether the Family Court followed the laws of Nigeria when issuing the second set of court orders in 2021 and 2022. Additionally, we note that several documents from the orphanage indicate that the Petitioner and his spouse "lifted" the Beneficiary from the orphanage on February 18, 2019, despite their later admission that they were not in the country on that date.

We acknowledge the Petitioner's assertions on appeal. However, we reiterate that a Form I-604 investigation revealed negative information, including several inconsistencies in C-A's affidavit,

missing or conflicting information in documents from the Ministry, Family Court of [] State and orphanage, casting doubt on the Beneficiary's origins and the validity of the foster and adoption orders. Furthermore, evidence submitted by the Petitioner in response to the NOID did not sufficiently address the discrepancies identified in the Director's decision, and the Petitioner has not submitted new evidence credibly explaining or otherwise addressing the same on motion or appeal. Accordingly, the Petitioner has not established, by a preponderance of the evidence, that the Beneficiary meets the definition of an orphan under section 101(b)(1)(F) of the Act, and the orphan petition will remain denied.

ORDER: The appeal is dismissed.